LIBRARY
OCT 18 1973 SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-347

PHILLIPS PETROLEUM COMPANY, a Corporation,
Petitioner,

vs.

TEXACO INC., a Corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME ON BEHALF OF NORTHERN NATURAL GAS COMPANY, NORTHERN HELEX COMPANY, CITIES SERVICE GAS COMPANY, CITIES SERVICE CRYOGENICS, INC., AND CITIES SERVICE HELEX, INC.

TOGETHER WITH BRIEF AMICUS CURIAE

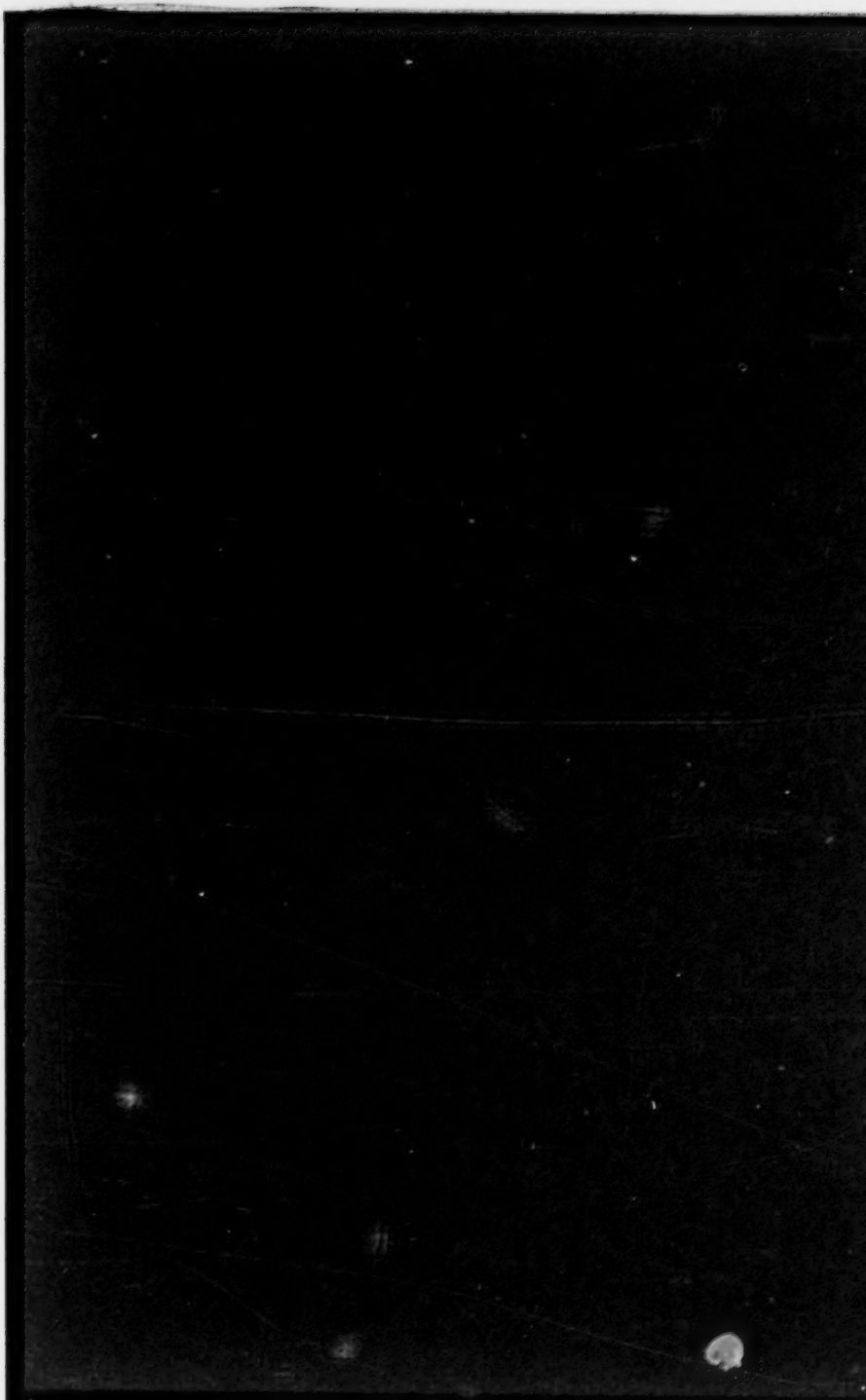
F. VINSON ROACH
DANIEL J. O'BRIEN
PATRICK J. McCARTHY
2223 Dodge Street
Omaha, Nebraska 68102
Counsel For:
Northern Natural Gas Company, Northern Helex Company

GRAYDON D. LUTHEY
WILLIAM J. SEARS
First National Building
Oklahoma City, Oklahoma 73125
Counsel For:
Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc.

*MARK H. ADAMS
MARK H. ADAMS II
WILLIAM S. RICHARDSON
P.O. Box 1034
Wichita, Kansas 67201
Counsel For:
Northern Natural Gas Company, Northern Helex Company, Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc.

*Counsel upon whom service is to be made.

W. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3080



In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-347

PHILLIPS PETROLEUM COMPANY, a Corporation,
Petitioner,

vs.

TEXACO INC., a Corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME ON BEHALF OF NORTHERN NATURAL GAS COMPANY, NORTHERN HELEX COMPANY, CITIES SERVICE GAS COMPANY, CITIES SERVICE CRYOGENICS, INC., AND CITIES SERVICE HELEX, INC.

Northern Natural Gas Company, Northern Helex Company, Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc. ("Applicants") respectfully move the Court for leave to file a brief out of time in this case as *Amicus Curiae*. The attorney for the petitioner, Phillips Petroleum Company, has refused to consent and the attorney for the respondent, Texaco, Inc. has refused to consent.

Section 2403 of Title 28, United States Code may be applicable. Applicants believe that no Court of the United States has certified to the Attorney General the fact that the constitutionality of Section 11 of the Helium Act Amendments (74 Stat. 918, 50 U.S.C. §167) and the Natural Gas Act (52 Stat. 821, 15 U.S.C. §717 et seq.) may be drawn in question.

Applicants have an interest in this case in that Northern Natural Gas Company and Cities Service Gas Company are interstate natural gas pipeline companies whose principal source of supply is from the helium bearing natural gas fields of the Hugoton area in Western Kansas and the Oklahoma and Texas panhandles. That area contains 99% of the Nation's recoverable supply of helium. Northern Natural Gas Company and Cities Service Gas Company buy their supply of helium bearing natural gas from approximately five hundred independent producers of natural gas (including the respondent, Texaco, Inc.) under separate long term contracts on a volumetric basis. Applicants, Northern Helex Company, Cities Service Helex, Inc., and Cities Service Cryogenics, Inc., are affiliated companies who extract helium from a portion of the helium bearing natural gas stream which is then sold to the United States in the form of a helium-gas mixture under long term contracts authorized by the Helium Act Amendments of 1960 (Public Law 86-777, 74 Stat. 918, 50 U.S.C. §§167, et seq.).

Applicants are interpleader plaintiffs in the Consolidated Helium Cases which were considered by the United States Court of Appeals for the Tenth Circuit in *Northern Natural Gas Company* v. *Grounds*, 441 F.2d 704, certiorari denied and rehearing denied, 404 U.S. 951 and 1063, and in the instant case. Those complex proceedings, involving some 30,000 royalty owners, 500 independent producers, 8

helium companies, and the United States are pending in the United States District Court for the District of Kansas (Case No. KC-1980, et al.).

The basic issue in the instant proceedings is whether Section 11 of the Helium Act Amendments of 1960 created a new cause of action cognizable in the Federal Courts, but in reaching that determination the Court of Appeals has construed its prior opinion in *Northern Natural Gas Company* v. *Grounds, supra,* in a manner which may directly affect the numerous parties to that case as well as the parties to the mass of new litigation engendered by the decisions of the Court of Appeals in that action and in the instant case.

In addition to the ultimate jurisdictional issue in this case, the following questions of law are inherent in the case and have not been adequately presented by either the petitioner or the respondent:

(1) Does the Natural Gas Act and Section 11 of the Helium Act Amendments: (a) nullify private contracts for the purchase and sale of helium bearing natural gas; (b) make "private contract law and the principles applicable thereto" not controlling, or (c) make inoperative "the application of any principles of equity"?

(2) If so, are the Natural Gas Act and Section 11 of the Helium Act Amendments (as here construed and sought to be applied) repugnant to or in contravention of the Due Process and Just Compensation Clauses of the Fifth Amendment to the Constitution of the United States?

(3) Has the Court of Appeals correctly construed Section 11 of the Helium Act Amendments to apply to sales of helium-bearing natural gas as well as to sales of "helium", as such?

A determination by this court of the basic jurisdictional issue, or of any of the controlling questions of law inherent in such determination, will expedite not only the disposition of the instant case, but advance the ultimate termination of the great volume of helium litigation which has so long plagued the parties and the courts.

WHEREFORE, Applicants respectfully move the court for leave to file the attached brief in the case as *Amicus Curiae*.

F. VINSON ROACH
DANIEL J. O'BRIEN
PATRICK J. MCCARTHY
2223 Dodge Street
Omaha, Nebraska 68102
Counsel For:
Northern Natural Gas Company, Northern Helex Company

GRAYDON D. LUTHEY
WILLIAM J. SEARS
First National Building
Oklahoma City, Oklahoma 73125
Counsel For:
Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc.

MARK H. ADAMS
MARK H. ADAMS II
WILLIAM S. RICHARDSON
P.O. Box 1034
Wichita, Kansas 67201
Counsel For:
Northern Natural Gas Company, Northern Helex Company, Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc.

By .....
Counsel for all Applicants